

Town of Arlington  
Zoning Board of Appeals  
Rules and Regulations  
Adopted: January 28, 2020

1. General

- 1.1. Authority: The Arlington Zoning Board of Appeals (the Board) is authorized by and in accordance with the applicable sections of Chapters 30A and 40A of the General Laws of the Commonwealth of Massachusetts.
- 1.2. Powers: Under Zoning Bylaw, the Board shall have the following powers. In exercising these powers, the Board may, in conformity with the provisions of the Zoning Bylaw and the Zoning Act, revise or affirm in whole or in part, or may modify, any order or decision, and may make such order or decision as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issue of a permit.
  - 1.2.1. Appeals: To hear and decide appeals. Any person aggrieved by reason of his inability to obtain a permit from the Inspector of Buildings under the provisions of the Zoning Bylaw, by any officer, department or board of the town, or by any order or decision of the Inspector of Buildings or other town official in violation of any provision of the Zoning Bylaw may take an appeal to the Board.
  - 1.2.2. Special Permits: To hear and decide applications for special permits except for applications referred to the Arlington Redevelopment Board (ARB) by the Zoning Bylaw.
  - 1.2.3. Variances: To authorize upon appeal, or upon petition in cases where a particular use is sought for which no permit is required, with respect to a particular parcel of land or to an existing building thereon a variance from the terms of the Zoning Bylaw. In exercising this power, the Board may impose limitations both of time and use, and a continuation of the use permitted may be conditioned upon compliance with regulations to be made and amended from time to time thereafter.
  - 1.2.4. Comprehensive Permits: Refer to the Board's current Comprehensive Permit Rules as adopted and amended.
- 1.3. Organization
  - 1.3.1. Membership: The Board shall consist of five (5) full members and two (2) associate members. All members of the Board shall be residents of the Town of Arlington, one (1) member shall be an Attorney-At-Law, and at least one (1) of the remaining members shall be a registered architect or a registered professional engineer.
  - 1.3.2. Appointment: The members of the Board are appointed by the Arlington Select Board for a term not-to-exceed three (3) years.
  - 1.3.3. Positions: Each year, the members of the Board shall elect from among the members of the Board a Chair and a Vice Chair. The Chair shall preside over hearings, rule on points of order, supervise the work of consultants to the Board, and direct the general work of the Board. In the absence of the Chair, the Vice Chair shall assume the role of the Chair. The Board Administrator shall serve as the Clerk at all hearings, supervising the recording, taking the minutes, and accepting exhibits and documents submitted by applicants.

1.3.4. In the absence of five (5) full members at any individual meeting or hearing, an associate member may, with the approval of the Chair, assume the role of a full member for that meeting or hearing.

## 2. Application Procedures

### 2.1. Appeals

2.1.1. Any person desiring to obtain the permission of the Board for any purpose for which such permission is required under the provisions of the Zoning Bylaw shall make application in writing therefor within thirty (30) days from the date of the order or decision which is being appealed by filing a notice of appeal, specifying the grounds thereof, with the Town Clerk. The Town Clerk shall forthwith transmit copies thereof to such officer or board whose order or decision is being appealed, and to the members of the Board. Such officer or board shall forthwith transmit to the Board all documents and papers constituting the record of the case in which the appeal is taken.

2.1.2. The Board shall fix a reasonable time for the hearing of any appeal or other matter referred to it or any petition for a variance. At the hearing, any party, whether entitled to notice thereof or not, may appear in person or by agent or by attorney.

### 2.2. Application Process

2.2.1. Application: The application form for an appeal, special permit, or variance shall be approved by the Board and made available at the Building Department Office during their regular office hours. The application shall be accompanied by a checklist of required documentation and list of current fees.

2.2.2. Documentation: The documents required to be filed with the application are to be included on the application checklist for the type of review being sought: appeal, special permit, or variance. An application is not considered complete until all the required documentation is filed including a receipt for all applicable fees.

2.2.3. Notification: Notice of the time and place of all hearings and the subject matter, sufficient for identification, to be published in a newspaper of general circulation in the town once in each of two (2) successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing, and also before the day of the hearing shall send notice by mail, postage prepaid, to the petitioner and to the owners of all property deemed by the ZBA to be affected thereby, including the abutters and the owners of land next adjoining the land of the abutters, notwithstanding that the abutting land or the next adjoining land is located in another city or town, as they appear on the most recent local tax list, and to the ARB. The publication required by this section shall contain the following printed in bold face type: (1) the name of the petitioner; (2) the location of the area or premises which are the subject of the petition; and (3) the date and place of the public hearings.

2.2.4. Fees: Application fees shall be set by the Board and the list of fees shall accompany the application. No application shall be considered complete until the required fee or fees have been paid in full.

2.2.5. Online Posting of Documents: Unless for good cause demonstrated by the applicant consistent with public safety exemptions under the Massachusetts Public Records Laws, the applicant shall provide to the Board a PDF copy of all materials submitted with the application with the understanding that the documents may be posted to the Town's website or be included in an online posting of the hearing's agenda. This requirement will not

relieve the Board of its obligation to have a print copy of the application available at the Inspectional Services Department for public review.

2.3. Coordination with Other Town Boards and Commissions

2.3.1. Arlington Redevelopment Board: Special Permit applications for lots meeting the requirements of Section 3.4.2 in the Zoning Bylaw shall be heard by the Arlington Redevelopment Board instead of the Board. All Variance and Comprehensive Permit applications shall be heard by the Board.

2.3.2. Arlington Conservation Commission: Lots that meet the criteria for review by the Arlington Conservation Commission must receive a favorable review by that commission before being heard by the Board. Hearings for Lots that meet the criteria but have not received a favorable review will be continued until such time as a favorable review is issued.

2.3.3. Arlington Historical Commission: Lots and Structures that meet the criteria for review by the Arlington Historical Commission must receive a favorable review by that commission before being heard by the Board. Hearings for Lots and Structures that meet the criteria but have not received a favorable review will be continued until such time as a favorable review is issued.

2.3.4. Historic Districts Commission: Lots and Structures that meet the criteria for review by the Historic Districts Commission must receive a favorable review by that commission before being heard by the Board. Hearings for Lots and Structures that meet the criteria but have not received a favorable review will be continued until such time as a favorable review is issued.

2.4. Prehearing Process:

2.4.1. Preliminary Meeting with Inspector: The applicant should meet with the Building Inspector or his designate to determine the appropriate review by the Board. The Inspector should provide the appropriate application, forms, and other documents as appropriate for the requested review.

2.4.2. Completion of Required Application and Documentation: The Applicant is required to provide all the information requested under Section 2.2.2. If there is a reason why some of the information cannot be provided, that should be brought to the attention of the Building Inspector or his designate for review.

2.4.3. Review of Submission for Completeness with Inspector: Upon completion of the required application, forms, and other documents, the applicant shall meet with the Building Inspector or his designate to review the materials and confirm that the application is complete per Section 2.2.2.

2.4.4. Submission of Applicable Fees: A receipt showing payment of the required fees shall be included with the Application.

2.4.5. Scheduling of Hearing by Administrator: Once the Building Inspector or his designate has confirmed that the application is complete and the applicable fees have been paid, the Clerk shall call upon the Chair to schedule a hearing. The Clerk shall file legal notices in the paper of record and provide notice to interested parties as defined in Section 2.2.3.

2.4.6. Preparation of Planning Memorandum: The Director of the Department of Planning and Community Development shall review Board applications and provide a memorandum to the Board outlining the case and any recommendations for Board consideration.

### 3. Hearing Procedure

#### 3.1. Scheduling

3.1.1. The Board shall hold hearings and render decisions in accordance with the applicable time limitations as set forth in Sections 9 and 15 of the Zoning Act.

#### 3.2. Open Meeting

3.2.1. All meetings and hearings shall be open to the public and conducted in accordance with M.G.L. c. 30A, §§ 18-25 and 940 CMR 29.

#### 3.3. Testimony

3.3.1. The Chair, or in his absence the Acting Chair, may administer oaths, summon witnesses, and call for the production of papers. The Board shall make a detailed record of the proceedings.

3.3.2. The applicant is expected to make a brief presentation of their case to the Board. Members of the Board may ask questions of the Applicant during and after the presentation. The Board will then call for comments from the public. After receiving comments, the Board shall be free to ask questions of the Applicant while it deliberates.

3.3.3. Members of the Board, the Applicants, and all members of the public shall adhere to the *Robert's Rules* of decorum during a debate including being polite, addressing all questions through the Chair, listening to all sides, focusing on issue over personalities, and avoiding questioning motives. Individuals who are unable to adhere to decorum will forfeit the remainder of their time to address the Board.

#### 3.4. Decision

3.4.1. At the conclusion of all testimony, questioning, and discussion, the Chair shall call for a vote of the Board. The record shall include the vote of each present voting member, setting forth clearly the reasons for the Board's decision, and of its other official actions. The concurring vote of four (4) members of the Board shall be necessary to reverse any order or decision of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under the Zoning Bylaw, or to effect any variance in the application of the Zoning Bylaw.

3.4.2. The granting of any appeal by the Board shall not exempt the applicant from any provision of the Zoning Bylaw not specifically ruled upon by the Board or specifically set forth as exception in this particular case from a provision of the Zoning Bylaw. It shall be unlawful for any owner or person to reconstruct, convert or alter a structure or change the use, increase the intensity of use, or extend or displace the use of any building, other structure or lot, or change any required limitations or special conditions imposed by the Board in authorizing a special permit or variance without appealing to the Board as a new case over which the Board shall have complete administrative power to deny, approve or modify.

3.4.3. Voting members of the Board shall sign the official copy of the written decision either in person or in an electronic format acceptable to the Town.

#### 3.5. Withdrawal

3.5.1. An applicant may withdraw an application that is before the Board without prejudice provided that the request is made at least forty-eight (48) hours before the scheduled hearing. An applicant may further withdraw an application that is before the board up until the time a vote is called for by the Chair, but this shall result in the forfeiture of all fees.

#### 3.6. Continuance

3.6.1. At any point, either the applicant or the Board may request a continuance of a particular hearing until a future scheduled hearing. During that time, the applicant may be requested to provide additional information or documentation by the Board.

### 3.7. Recording

3.7.1. A copy of the record shall be filed within fourteen (14) days in the office of the Town Clerk and the office of the ARB. Notice of decisions shall be mailed immediately to parties in interest as designated in paragraph 2.2.3. above, and to every person present at the hearing who requests that notice be sent to him and states the address to which such notice is to be sent. Upon the granting of a limited or conditional zoning variance or special permit, the Board shall issue to the Petitioner a notice, certified by the Chair or Clerk, containing the name and address of the Petitioner, identifying the land affected, and stating that a limited or conditional variance or special permit has been granted which is set forth in the decision of the Board on file in the office of the Town Clerk. No such variance or permit shall take effect until such notice is recorded in the Middlesex County Registry of Deeds. The fee for recording such notice shall be paid by the Petitioner and the notice shall be indexed in the grantor index under the name of the owner of record.

### 3.8. Reconsideration

3.8.1. No appeal or petition for a variance from the terms of the Zoning Bylaw with respect to a particular parcel of land or the building thereon, and no application for a special permit under the terms of the Zoning Bylaw, which has been unfavorably acted upon by the Board shall be considered on its merits by the Board within two (2) years after the date of such unfavorable action except with the consent of all but one of the members of the ARB; provided, however, that an annulment of a favorable decision of the Board by the Court pursuant to the authorization contained shall not constitute unfavorable action within the meaning of this paragraph.

## 4. Adoption of Rules and Regulations

4.1. Per the Zoning Bylaw, the Board is empowered to adopt rules, pursuant to the Zoning Act and not inconsistent with the provisions of the bylaws of the town, for conducting its business and otherwise carrying out the purposes of the Zoning Bylaw. A copy of these rules shall be filed in the office of the Town Clerk.

End of Rules and Regulations